



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DA 12-641
May 2, 2012

MOBILITY FUND PHASE I AUCTION SCHEDULED FOR SEPTEMBER 27, 2012
NOTICE AND FILING REQUIREMENTS AND OTHER PROCEDURES FOR AUCTION 901

AU Docket No. 12-25

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I. GENERAL INFORMATION

A. Introduction and Summary

1. By this Public Notice, the Wireless Telecommunications Bureau (“Wireless Bureau”) and the Wireline Competition Bureau (“Wireline Bureau”) (collectively, the “Bureaus”) establish the procedures that will be used for the reverse auction that will award \$300 million in one-time Mobility Fund Phase I support.¹ This auction, which is designated as Auction 901, is scheduled to be held on September 27, 2012. This Public Notice establishes the procedures, terms, and conditions governing Auction 901 and the post-auction application process, and provides other important information for parties that wish to seek Mobility Fund Phase I support.

2. Auction 901 will award one-time support to carriers that commit to provide 3G or better mobile voice and broadband services in census blocks where such services are unavailable.² Support will be allocated to maximize the road miles covered by new mobile services without exceeding the budget of \$300 million. Winning bidders will be obligated to choose whether to deploy 3G service within two years or 4G service within three years of the award of support.

3. Auction 901 will be the first auction to award high-cost universal service support through competitive bidding. The *USF/ICC Transformation Order* established the Mobility Fund as a universal service support mechanism dedicated expressly to mobile services and adopted rules for distribution of the \$300 million initial budget through Mobility Fund Phase I.³ In the *USF/ICC Transformation Order*, the Commission delegated authority to the Bureaus to implement Mobility Fund Phase I, including the authority to prepare for and conduct an auction and administer program details.⁴ On February 2, 2012, the Bureaus released the *Auction 901 Comment Public Notice*, which identified a preliminary list of census blocks potentially eligible for Mobility Fund Phase I support and sought comment on whether census blocks should be added or removed from the list of potentially eligible census blocks, on the details of auction procedures, and on certain related program requirements for Auction 901.⁵

¹ Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”), *pets. for review pending sub nom. Direct Commc’ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

² We use the terms “3G,” “3G or better,” “current generation,” and “advanced” interchangeably to refer to mobile wireless services that provide voice telephony service on networks that also provide services such as Internet access and email. We refer throughout this Public Notice to “awarding” or “selecting awardees” by auction for simplicity of expression. As provided by the Commission’s rules, *see* 47 C.F.R. §§ 54.1005(b) and 54.1008(a), and discussed further below, each party that becomes a winning bidder in the auction must file an application for support. Only after review of the application to confirm compliance with all the applicable requirements will a winning bidder become authorized to receive support.

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17674-75 paras. 28-29

⁴ *Id.* at 17783 para.329, 17803 para. 411.

⁵ “Mobility Fund Phase I Auction Scheduled for September 27, 2012; Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements, AU Docket No. 12-25,” *Public Notice*, DA 12-121, 27 FCC Rcd 530 (WTB/WCB 2012) (“*Auction 901 Comment Public Notice*”). On February 10, 2012, the Bureaus (continued....)

4. After considering 69 separate filings in response to the *Auction 901 Comment Public Notice*, in this Public Notice the Bureaus, among other things:

- Provide the final list of census blocks eligible for Mobility Fund Phase I support in Auction 901;
- Conclude that to establish the number of qualifying road miles associated with each eligible census block, we will add three additional Census road categories to the three categories of roads that we proposed in the *Auction 901 Comment Public Notice*;
- Conclude that we will conduct Auction 901 as a single round, sealed bid auction;
- Provide for bidding on predefined aggregations of eligible census blocks by census tracts, except in Alaska, where bidding will be permitted on individual eligible census blocks;
- Require that each winning bidder provide coverage, consistent with the performance requirements of the rules adopted in the *USF/ICC Transformation Order*, to a minimum of 75 percent of the road miles in each census tract for which it wins support, calculated as the total of the road miles in the eligible census blocks in the tract; and
- Permit winning bidders to demonstrate that they offer supported services at rates comparable to those in urban areas by offering one (1) stand-alone voice and one (1) data plan in supported area(s) that match plans in urban areas, *i.e.*, in top 100 Cellular Market Areas (CMAs), and cost no more than the matching plans.

5. In addition, this Public Notice reviews important Mobility Fund Phase I program requirements, including eligibility requirements for participation and the public interest obligations of winning bidders; describes in detail pre-auction procedures and deadlines, including auction application requirements; explains requirements and details related to the structure and procedures for bidding as outlined above; and provides an overview of the post-auction procedures, requirements, and deadlines, including information on the post-auction application and on payment requirements that will be used to enforce carriers' obligations.

B. Overview of Mobility Fund Phase I

1. Background

6. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost component of the Universal Service Fund (USF) to help ensure the universal availability of fixed and mobile communication networks capable of providing voice and broadband services where people live, work, and travel. The Commission's universal service reforms include a commitment to fiscal responsibility, accountability, and the use of market-based mechanisms, such as competitive bidding, to provide more targeted and efficient support than in the past. For the first time, the

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released an updated list of potentially eligible census blocks. "Mobility Fund Phase I Auction; Updated List of Potentially Eligible Census Blocks, AU Docket No. 12-25," *Public Notice*, DA 12-187, 27 FCC Rcd 1476 (WTB/WCB 2012) ("*Auction 901 Updated Blocks Public Notice*"). Comments and reply comments on most issues were due on February 24, 2012, and March 9, 2012, respectively. The Bureaus extended the deadlines for filing comments and reply comments on census block eligibility challenges to March 16, 2012, and March 26, 2012, respectively. "Mobility Fund Phase I Auction; Limited Extension of Deadlines for Comments and Reply Comments on Census Block Eligibility Challenges, AU Docket No. 12-25," *Public Notice*, DA 12-236, 27 FCC Rcd 1682 (WTB/WCB 2012). A listing of parties that filed comments, reply comments and *ex parte* notices or other filings may be found in Attachment D. Filings are identified in this Public Notice by the abbreviated names shown in Attachment D. Comments specifically addressing census block eligibility issues are identified as "ECB" filings.

Commission established a universal service support mechanism dedicated expressly to mobile services – the Mobility Fund.

7. Phase I of the Mobility Fund will provide up to \$300 million in one-time support to address gaps in mobile services availability by supporting the build-out of current-and next-generation mobile networks in areas where these networks are unavailable.⁶ The support offered under Phase I of the Mobility Fund is in addition to any ongoing support provided under existing high-cost universal service program mechanisms. Phase II of the Mobility Fund will provide \$500 million annually for ongoing support of mobile services.⁷ The Commission sought comment on the details for Mobility Fund Phase II in the Further Notice of Proposed Rulemaking (FNPRM) adopted in the *USF/ICC Transformation Order*.⁸

8. The goal for Mobility Fund Phase I is to extend the availability of mobile voice and broadband service on networks that provide third generation (often called “advanced” or “3G”) or better performance and to accelerate the deployment of fourth-generation (“4G”) wireless networks in areas where it is cost effective to do so with one-time support.⁹ To maximize coverage in eligible unserved areas within the established budget of \$300 million, the *USF/ICC Transformation Order* established general rules for a reverse auction to identify those areas where additional investment can make as large a difference as possible, in a transparent, simple, speedy, and effective way.¹⁰ In this reverse auction, bidders will indicate the amount of one-time support they require to deploy service meeting the defined performance standard in given unserved areas. Because the auction will generally award support based on the lowest per-unit bid amount irrespective of geographic area, bidders will compete not only against other carriers that may be seeking support in the same areas, but also against carriers bidding for support in other areas nationwide. Support will be awarded based on the lowest bid amounts submitted, but will not be awarded to more than one provider per area.¹¹ Successful bidders will be awarded support for an area at the price they bid.

2. Identification of Unserved Census Blocks Eligible for Mobility Fund Support

9. In the *USF/ICC Transformation Order*, the Commission decided to target Mobility Fund Phase I support to census blocks without 3G or better service at the geometric center of the block, referred to as the centroid, and concluded that American Roamer data¹² is the best available data source for

⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17773 para. 299. The Commission also designated an additional \$50 million for one-time support targeted exclusively for advanced mobile services on Tribal lands, which will be awarded by auction in 2013. *Id.* at 17819-20 para. 481. We will seek separate comment at a later date on issues relating to the Tribal Mobility Fund.

⁷ *Id.* at 17824 para. 494. Up to \$100 million of this amount annually is designated for support to Tribal lands.

⁸ *Id.* at 18069-85 paras. 1121-88.

⁹ *Id.* at 17781 para. 322.

¹⁰ *Id.* at 17781-83 paras. 322-28. We refer to areas without 3G or better services and the road miles within them as “unserved.” Those unserved areas and road miles eligible for Mobility Fund Phase I are determined as described in Sections I.B.2 and I.B.3, below.

¹¹ The Commission also provides for a 25 percent bidding credit for Tribally-owned or controlled providers that participate in Auction 901. *Id.*, 26 FCC Rcd at 17807 para. 430; 47 C.F.R. § 54.1004(c).

¹² Since the *USF/ICC Transformation Order* and *Auction 901 Comment Public Notice* were released, American Roamer changed its company name to Mosaik Solutions. See <http://www.mosaik.com/>. The coverage data analyzed (continued....)

determining where such service is unavailable.¹³ More specifically, the Commission concluded that it would consider any census block in the 2010 Census as unserved and thus eligible for support, if an analysis of the American Roamer data indicated that the centroid is not covered by networks using EV-DO, EV-DO Rev A, or UMTS/HSPA or better.¹⁴

10. In the *Auction 901 Comment Public Notice*, the Bureaus concluded that January 2012 American Roamer data was the most recently available for the purpose of doing an analysis to identify eligible census blocks and described the methodology for identifying potentially eligible blocks.¹⁵ The Bureaus used geographic information system (GIS) software to determine whether the American Roamer data show 3G or better wireless coverage at the centroid of each block.¹⁶ If the American Roamer data did not show such coverage, the block was determined to be unserved. In the *Auction 901 Updated Blocks Public Notice*, the Bureaus identified potentially eligible unserved blocks based on their analysis of 2010 Census data and January 2012 American Roamer data.¹⁷ Because Mobility Fund Phase I support will be awarded based on bid amounts and the number of road miles in each unserved census block, the list of potentially eligible census blocks did not include any unserved census blocks without road miles. The updated list consisted of 467,604 census blocks that lacked 3G or better service at the centroid of the block.

11. Pursuant to the *USF/ICC Transformation Order*, we will also make ineligible for support census blocks for which, notwithstanding the absence of 3G service, any provider has made a regulatory

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to determine eligible census blocks were released when the company was known as American Roamer, and we continue to refer to that data as “American Roamer data” for purposes of this Public Notice.

¹³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17783-84 paras. 332, 334. US Cellular and the Pennsylvania Commission contend that targeting support to unserved census blocks makes those blocks into service areas in a manner that conflicts with Section 214 of the Communications Act of 1934, as amended (“Communications Act”). US Cellular Comments at 2; Pennsylvania Commission Reply at 2. However, the Commission’s targeting of support does not redefine any existing ETC’s service area based on the census blocks in which it may receive Mobility Fund Phase I support. Rather, the support and obligations related to it apply to those census blocks within the ETC’s service area. *USF/ICC Transformation Order* at 17798-99 para. 391. With respect to any ETC newly designated in connection with Mobility Fund Phase I, nothing in the Communications Act bars the use of census blocks as a method of defining service areas. The Pennsylvania Commission correctly notes that the Communications Act prescribes the use of a rural telephone company’s study area as a service area in certain circumstances. Pennsylvania Commission Reply at 3 (citing 47 USC § 214(e)(5)). However, the Commission’s decision to target support to specific census blocks does not define a “service area” for purposes of determining the scope of an ETC’s obligations, so this provision is not relevant. Finally, the Pennsylvania Commission asserts that the Commission’s use of census blocks requires the states to utilize census blocks in defining ETC study areas. *Id.* at 2. We disagree. The Commission’s decision does not require the States to use any particular geography in defining a study area, though a carrier might naturally seek to have its study area defined in conjunction with the areas in which it may receive support.

¹⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17786-87 paras. 343-44.

¹⁵ *Auction 901 Comment Public Notice*, 27 FCC Rcd at 534-35 para. 15.

¹⁶ Specifically, the Bureaus used ArcGIS software from Esri to determine whether the American Roamer data showed 3G or better coverage at each block’s centroid. The following technologies were considered 3G or better: EV-DO, EV-DO Rev A, UMTS/HSPA, HSPA+, WiMAX, and LTE. We use the term “centroid” to refer to the internal point latitude/longitude of a census block polygon. For more information, see U.S. Census Bureau, Putting It All Together, http://lehd.did.census.gov/led/library/doc/PuttingItTogether_20100817.pdf (last visited April 30, 2012).

¹⁷ *Auction 901 Updated Blocks Public Notice*, 27 FCC Rcd at 1476-77 paras. 3-4.

commitment to provide 3G or better wireless service, or has received a funding commitment from a federal executive department or agency in response to the carrier's commitment to provide 3G or better wireless service.¹⁸ Such federal funding commitments include, but are not limited to, those made under the Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP) authorized by the American Recovery and Reinvestment Act of 2009 (ARRA).¹⁹

12. Furthermore, the Commission established certain bidder-specific restrictions.²⁰ Specifically, each applicant for Mobility Fund Phase I support is required to certify that it will not seek support for any areas for which it has made a public commitment to deploy, by December 31, 2012, 3G or better wireless service.²¹ In determining whether an applicant has made such a public commitment, we anticipated that we would consider any public statement made with some specificity as to both geographic area and time period. This restriction will not prevent a bidder from seeking and receiving support for an unserved area for which another provider has made such a public commitment.

13. In the *USF/ICC Transformation Order*, the Commission, responding to concerns about potential errors in determining coverage of a particular area, provided for a limited timeframe for challenges to those initial determinations. The Commission explained that it would "make public a list of unserved areas as part of the pre-auction process and afford parties a reasonable opportunity to respond by demonstrating that specific areas identified as unserved are actually served and/or that additional unserved areas should be included."²² In the *Auction 901 Comment Public Notice*, the Bureaus therefore asked commenters to indicate which blocks included in the revised list should not be eligible for Mobility Fund Phase I support "and provide supporting evidence." Similarly, we asked commenters to indicate which blocks *not* included in the revised list should be eligible for support "and provide supporting evidence."²³

14. We received numerous comments, reply comments, *ex parte* and other submissions relating to census block eligibility.²⁴ Three states requested that we add census blocks to the revised list based on State Broadband Initiative data.²⁵ Five BIP and/or BTOP awardees submitted comments

¹⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17786 paras. 341-42.

¹⁹ See ARRA, P.L. No. 111-5, 123 Stat. 115 (2009). The ARRA authorized BTOP and BIP. ARRA provided \$4.7 billion to the National Telecommunications and Information Administration (NTIA) for BTOP and the State Broadband Data and Development Plan. NTIA's BTOP grants support the deployment of broadband infrastructure, enhance and expand public computer centers, and encourage sustainable adoption of broadband service. <http://www2.ntia.doc.gov/about> (last visited April 30, 2012). The U.S. Department of Agriculture's Rural Utilities Service (USDA RUS) administers BIP, provides over \$3.5 billion in loans, grants, and loan/grant combinations to assist with addressing the challenge of rapidly expanding the access and quality of broadband services across rural America and to meet the objectives of the ARRA. http://www.rurdev.usda.gov/utp_bip.html (last visited April 30, 2012).

²⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17802-03 para. 410.

²¹ See 47 C.F.R. § 54.1005(a)(5).

²² *USF/ICC Transformation Order*, 26 FCC Rcd at 17785 para. 337.

²³ *Auction 901 Comment Public Notice*, 27 FCC Rcd at 536 para.19.

²⁴ "Mobility Fund Phase I Auction Limited Extension of Deadlines for Comments and Reply Comments on Census Block Eligibility Challenges, AU Docket No. 12-25" *Public Notice*, DA 12-236, 27 FCC Rcd 1682 (WTB/WCB 2012).

²⁵ "Launched in 2009, NTIA's State Broadband Initiative (SBI) implements the joint purposes of the Recovery Act and the Broadband Data Improvement Act, which envisioned a comprehensive program, led by state entities or non- (continued....)"

requesting that we remove census blocks. Twenty-two other providers also requested that we either add or remove census blocks from our updated list of potentially eligible blocks. We received *ex parte* submissions as well, including submissions from USDA RUS and NTIA.

15. Indiana Commission, Kentucky and Minnesota requested through state agencies that we add to our list census blocks they identify as unserved based on the State Broadband Initiative data gathered by the individual states for the National Broadband Map, arguing their data differs from our analysis of American Roamer data.²⁶ In the *USF/ICC Transformation Order* the Commission rejected the use of the National Broadband Map generally because of inconsistencies in the initial phase relating to wireless services data.²⁷ While we appreciate that data submitted for and displayed in the National Broadband Map may have improved, we conclude that the states have not provided us with enough information to justify a conclusion that the states' data is more reliable than the Bureaus' analysis of American Roamer and other data, which the Commission determined to use as a consistent basis for determining eligible census blocks across all states. We therefore decline to add as eligible census blocks those listed by Indiana Commission, Kentucky and Minnesota in their filings.

16. We received *ex parte* submissions from USDA RUS and NTIA providing information on the location of their BIP and BTOP awards in response to our request for awards proposing mobile wireless projects using 3G or better technology.²⁸ We made this request in light of the Commission's determination to make ineligible for support census blocks where a carrier had made a commitment to provide 3G or better mobile service in return for a federal funding commitment such as those made under BIP and BTOP awards.²⁹ Five carriers submitted comments listing census blocks to be removed from our list of potentially eligible blocks based on their receipt of BIP and/or BTOP awards to provide 3G or better service.³⁰

17. USDA RUS provided us with a list of Census 2000 census blocks associated with BIP awards for mobile wireless projects.³¹ After converting the USDA RUS list to 2010 census blocks³² and

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profit organizations working at their direction, to facilitate the integration of broadband and information technology into state and local economies. . . . [t]he SBI program . . . assist[s] states in gathering data twice a year on the availability, speed, and location of broadband services, as well as the broadband services that community institutions, such as schools, libraries and hospitals, use. This data is used by NTIA to update the National Broadband Map, the first public, searchable nationwide map of broadband availability launched February 17, 2011." <http://www2.ntia.doc.gov/SBDD> (last visited April 30, 2012).

²⁶ Minnesota ECB Comments; Kentucky ECB Comments; Indiana Commission ECB Comments; Indiana Commission ECB Reply.

²⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17784 para. 335.

²⁸ NTIA *ex parte*; USDA RUS *ex parte*.

²⁹ *USF/ICC Transformation Order*, 26 FCC Rcd 17786 at paras. 341-42.

³⁰ Commnet et al. ECB Comments; Keystone ECB Comments; Pine Telephone ECB Comments; PTI Pacifica ECB Comments; VTel ECB Comments.

³¹ USDA RUS *ex parte*.

³² Wireless Bureau staff used the US Census Bureau method for converting Census 2000 tabulation blocks to Census 2010 tabulation blocks found at: http://www.census.gov/geo/www/2010census/rel_blk_overview.html (last visited April 30, 2012). These files contain the census block identification number (FIPS number) for 2000 census vintage geography and its associated 2010 vintage census block identification number. Three distinct cases occur in this relationship: a) a single 2000 block number is linked to a single 2010 block number, b) a single 2000 block number is linked to many 2010 block numbers and c) many 2000 block numbers are linked to a single 2010 block (continued....)

comparing the results to the 2010 census blocks submitted by the three carriers claiming BIP awards,³³ we find that the blocks submitted by the carriers were also reported by USDA RUS. This consistency leads us to conclude that the full list of census blocks receiving BIP awards, as identified by USDA RUS, should be removed from our list of eligible census blocks to comply with the *USF/ICC Transformation Order*.³⁴ As a result, the Census 2000 census blocks submitted by USDA RUS, which relate to seven awards made to six parties including three that commented in this proceeding, will be converted to 2010 census blocks as described, and removed.

18. NTIA provided us a list of Census 2000 census tracts associated with BTOP awards potentially for mobile wireless projects. The NTIA BTOP list may be over inclusive because the NTIA list describes areas at the census tract rather than the census block level, and it may include middle mile infrastructure projects rather than projects expressly expanding mobile services.³⁵ We compared this list with the 2010 equivalents of the census tracts associated with the 2010 census blocks submitted by the three commenters claiming BTOP awards. The census block data submitted by two of the three commenters corresponded closely to areas identified by NTIA.³⁶ Based on that correspondence, we remove the census blocks submitted by the two commenters from the list of eligible census blocks.³⁷ However, because the likely over inclusiveness of the NTIA data reduces our ability to ensure that we would be targeting areas with planned expansion of 3G or better coverage, we do not remove all of the areas on the NTIA list from consideration for Mobility Fund Phase I support. Further, we decline to remove the blocks that a third commenter identified as associated with a BTOP award, because the award and areas referenced by the commenter are not included in the NTIA list.³⁸

19. We turn now to the comments we received from 22 carriers requesting changes to our list of potentially eligible blocks – either removals based on assertions that census blocks listed as potentially

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number. The Census Bureau publishes these relationship files precisely for the purpose of linking geography files from one year to geography files of another year. Commission staff acquired these crosswalk files from this Census location above, and pushed them into the FCC Geographic Information Systems database. The resulting database was a single table containing every 2000 census block identification number and its associated 2010 census block identification number, for every state and territory. The staff then took the 2000 vintage block numbers filed in the proceeding and, using the relationship file database established above, published by Census, linked them to their defined 2010 geography. This link was performed using standard primary/foreign key matching (also known as tabular joins) in the FCC master database system. The relationship files generated 2010 census geography identification numbers for all input 2000 census block identification numbers. With this match, we are able to analyze the comments as they relate to the 2010 census block identification numbers in the list of potentially eligible areas released in the *Auction 901 Updated Blocks Public Notice*.

³³ Keystone ECB Comments; Pine Telephone ECB Comments; VTel ECB Comments.

³⁴ See USDA RUS ex parte; *USF/ICC Transformation Order*, 26 FCC Rcd at 17786 para. 341.

³⁵ See, e.g., Level 3 EON, LLC, *Broadband Infrastructure Application Submission to RUS (BIP) and NTIA (BTOP)*, submitted August 19, 2009 at http://www2.ntia.doc.gov/files/grantees/level3_texas_application_part1_review_redacted.pdf (last visited April 30, 2012).

³⁶ Pine Telephone ECB Comments; Commnet et al. ECB Comments.

³⁷ In reply comments, Smith Bagley challenged the list of census blocks, and in particular, the BTOP blocks that Commnet et al. requested be removed from eligibility. In a subsequent filing, Commnet et al. provided additional information supporting its request. Commnet et al. ECB ex parte. Smith Bagley submitted a further challenge to this additional information. Smith Bagley ECB ex parte.

³⁸ PTI Pacifica ECB Comments.

eligible currently have 3G or better service (or would in the relatively near future) or additions based on assertions that census blocks not listed as potentially eligible actually lack 3G or better service. First, we note that three parties, Mid-Rivers, PSW and WUE, filed comments listing census blocks for removal from the potentially eligible list based on assertions, at least in part, that they would be covered in the future, i.e., after the close of the record on March 26, 2012.³⁹ We conclude that we will not make census blocks ineligible based on these assertions. Pursuant to the *USF/ICC Transformation Order*, we provided parties with an opportunity to demonstrate “that specific areas identified as unserved are actually served”⁴⁰ or that parties had made a “regulatory commitment” to serve particular areas.⁴¹ We find that these assertions of coverage after the close of the record do not demonstrate actual service or a regulatory commitment that should be reflected in our final list of eligible census blocks.⁴² Although Mid-Rivers and PSW also claimed that they currently provide service with respect to some of their listed census blocks, because they do not differentiate between current and future coverage in their submissions, we reject their requested exclusions.

20. We received comments from 15 carriers identifying census blocks for removal and/or addition to our list of potentially eligible census blocks based on demonstrations of current coverage at the centroid, or the lack thereof, in the form of maps, discussions of drive tests, explanation of methodologies for determining coverage and in numerous cases, certifications by one or more individuals as to the veracity of the material provided.⁴³ We find these demonstrations to be sufficiently credible and

³⁹ Mid-Rivers ECB Comments at 4 (“Mid-Rivers Wireless is in the midst of a 3G network upgrade that will be completed well in advance of the September 27 Auction . . .”); PSW ECB Comments at 3 (“[T]he Bureaus should exclude those census blocks to which PSW intends to provide 4G coverage prior to the start of Auction 901”); WUE ECB Comments at 2 (“WUE is providing (or will by the close of the comment period provide) 3G service to the census blocks identified in Attachment A”); WUE ECB Reply at 1-2 (indicating that not all sites discussed in its comment were completed by the close of the comment period). *See also* Horry Telephone ECB ex parte (requesting the removal of census blocks, again based in part on assertions of future coverage).

⁴⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17785 para. 337.

⁴¹ *Id.*, 26 FCC Rcd at 17786, paras. 341-42. Mid-Rivers asserts that its actions regarding future coverage constitute a “regulatory commitment” to provide coverage that should make the areas involved ineligible for Mobility Fund Phase I support. Mid-Rivers EBC Comments at 4-5. In the *USF/ICC Transformation Order*, the Commission stated that support “will not be offered in areas where . . . any provider has made a regulatory commitment to provide 3G or better wireless service, or has received a funding commitment from a federal executive department or agency in response to the carrier’s commitment to provide 3G or better service.” *USF/ICC Transformation Order*, 26 FCC Rcd at 17786 para. 341. As discussed above, the Commission cited funding commitments under programs authorized by ARRA, including BTOP and BIP, as examples of federal funding commitments that alter an area’s eligibility. *Id.* We interpret the “regulatory commitment” provision to cover circumstances in which a provider has undertaken an obligation to perform where the failure to perform will carry meaningful consequences, just as recipients of BTOP and BIP funding and/or parties that accept conditions related to Commission approval of transactions are obligated to perform. While Mid-Rivers cites various statements that might indicate the sincerity of its commitments, e.g., assertions that it will make representations in future license modification applications and statements in Board minutes regarding future actions, *see* Mid-Rivers ECB Comments at 5, it has not demonstrated that any of these statements obligate it to perform in a way that will lead to meaningful consequences should it fail to do so. Accordingly, we decline to remove these areas from the list of eligible areas on this basis.

⁴² As noted below, we make this determination mindful of the Commission’s goal of moving quickly to award Mobility Fund Phase I support. *USF/ICC Transformation Order*, 26 FCC Rcd at 17785 para. 337.

⁴³ Bluegrass ECB Comments; Carolina West ECB Comments; Cellular Network ECB Comments; Commnet et al. ECB Comments; Cross Valliant ECB Comments; Cross Wireless ECB Comments; CT Cube ECB Comments; Eagle Telephone ECB Comments; Leaco ECB Comments; Matanuska ECB Comments; Nemont ECB Comments; NNCTC ECB Comments; Panhandle ECB Comments; Texas RSA ECB Comments; WUE ECB Comments; WUE ECB (continued....)

convincing to meet the requirements of the *USF/ICC Transformation Order* and incorporate the requested changes in our final list of eligible census blocks, to the extent that they contain road miles in any of the six categories we identify in our discussion below.

21. Finally, we received comments from five carriers listing census blocks for removal from the potentially eligible list based on bare assertions that their own coverage maps show they serve census blocks on our potentially eligible list.⁴⁴ In contrast to the submissions of the 15 carriers discussed immediately above, these five did not provide any information regarding the basis for their assertions. Reply commenters challenged several such submissions as inadequate.⁴⁵ We conclude that these assertions without supporting evidence do not demonstrate actual service, as envisioned by the *USF/ICC Transformation Order*, that provides a basis for us to depart from our determination of potentially eligible census blocks.⁴⁶

22. The list of census blocks released with this Public Notice is our final list of eligible census blocks that were identified by analyzing U.S. Census data, January 2012 American Roamer data, and information submitted by third parties. The difference between this list and the list provided with the *Auction 901 Updated Blocks Public Notice* is that we have removed and added blocks based on the comments of the 15 carriers that provided sufficiently credible and convincing demonstrations, we have removed blocks based on BTOP and BIP awards as discussed above, and we have removed blocks that do not have road miles in any of the six road categories that we identify below. We recognize that no such list will be perfect or perfectly up-to-date. We are mindful of the Commission's goal of moving quickly to expand the availability of advanced mobile services by providing one-time support with the limited funds budgeted for this purpose. We also heed the Commission's warning that more extended dialog and pre-auction review of these issues might risk undue delay in the award of this support.⁴⁷ Accordingly, the list of census blocks we release today contains our final determinations with respect to the areas eligible for Mobility Fund Phase I support. As discussed elsewhere in this Public Notice, these census blocks will, in most cases, be aggregated into their associated census tracts for bidding purposes.⁴⁸

23. We remind those interested in seeking Mobility Fund Phase I support that applicants for Auction 901 are required to certify that they will not seek support for any areas in which they have made a public commitment to deploy 3G or better service by December 31, 2012.⁴⁹ We discuss this requirement in greater detail in section II.E., where we describe the disclosures and certifications required in the short-form application for Auction 901. Here we note that we view the submission of the comments just discussed by carriers that identified census blocks to be removed from our list based on

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Reply. Nemont filed two comments challenging eligible census blocks, one requesting that blocks be added and another requesting that blocks be removed. Smith Bagley ECB Reply ("Reply Comments of Smith Bagley, Inc., regarding February 2, 2012, Public Notice") provided evidence in support of the addition of census blocks to our list, but did not provide a list of the specific census blocks they wanted to add. Absent a list of the specific census blocks in question, we are unable to amend our list as Smith Bagley requests.

⁴⁴ AT&T ECB Comments; Clearwire Comments; Sprint ECB Comments; T-Mobile ECB Comments; Verizon ECB Reply.

⁴⁵ US Cellular ECB Reply; Union Cellular ECB ex parte.

⁴⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17785 para. 337.

⁴⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17785 para 337.

⁴⁸ There are some exceptions to the tract-level aggregation for census blocks in Alaska and in tracts with Tribal lands. See Section IV.A.2. "Aggregation Method – Predefined Aggregations," below.

⁴⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17802-03 para 410.

future coverage or without an adequate demonstration of current actual service as public commitments to deploy 3G or better service by December 31, 2012, in the census blocks they list, for purposes of this certification.

3. Establishing Unserved Road Mile Units

24. In the *Auction 901 Comment Public Notice*, we proposed to establish road mile units based on three road categories defined and reported by the US Census Bureau: S1100, primary roads; S1200, secondary roads; and S1400, local and rural roads and city streets. We sought comment on this proposal and provided data on nine categories — the proposed three categories and six more categories. Several commenters asked us to include additional road categories.⁵⁰ Specifically, parties requested the addition of road categories S1500, 4WD vehicular trails; S1640, service drives; and S1740, private roads for service vehicles.⁵¹ Based on our review of these comments and analysis of 2010 census blocks and TIGER road mile data, we have decided to include these additional road categories. These categories will add three types of roads that are particularly important in some rural areas: unpaved dirt trails where a four-wheel drive vehicle is required, service drives that typically connect to highways and other types of roads, and private roads that are used in areas with logging, mining, oil fields, and ranches. Adding these categories provides a better representation of roads where people live, work, and travel since it means that, in every state and territory, we are making support possible for 98 percent or more of the total road miles in eligible blocks. Furthermore, adding these three categories includes more unserved road miles in almost all states and, comparing the road miles in the selected categories to the road miles for all nine categories, increases the parity among the states of the proportion of unserved road miles that are included.

25. The list of census blocks released with this Public Notice includes, for each block, the number of road miles in each of the six selected road categories.

4. Public Interest Obligations

26. *Voice and Broadband Service.* All Mobility Fund Phase I recipients must satisfy specified public interest obligations in exchange for the support they receive, as must all recipients of any Connect America Fund (CAF) support for fixed locations. Specifically, all CAF recipients, including Mobility Fund Phase I recipients, must offer stand-alone voice service to the public.⁵² Mobility Fund Phase I recipients must offer voice service with coverage of at least 75 percent or more of the designated road miles within the area for which support is provided.⁵³ Furthermore, receipt of Mobility Fund Phase I

⁵⁰ Blooston Comments; GCI Comments; RTG Comments and RTG Reply; ACS Reply; Mid-Rivers Reply; and NTCA Reply.

⁵¹ Parties also requested that factors other than road miles be considered, including mileage of waterways used for transportation and the population of eligible areas. See ACS Reply at 7-9 (waterways) and NASUCA et al. Comments at 6-7 (suggesting weighting road miles by population). The Commission, however, has determined that the relevant coverage unit for Mobility Fund Phase I will be road miles. *USF/ICC Transformation Order*, 26 FCC Rcd at 17788-89 para. 350; see 47 C.F.R. § 54.1002(b). While NASUCA et al. correctly notes that the Commission has sought comment on the use of other factors in connection with Phase II of the Mobility Fund, this does not change the Commission's determination with respect to Phase I. See NASUCA et al. Comments at 7 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 18070 para. 1122). Accordingly, these proposals to change the Commission's rules are beyond the scope of the Bureaus' authority when establishing auction procedures.

⁵² *USF/ICC Transformation Order*, 26 FCC Rcd at 17693 para. 80, 17791 para. 359; see 47 C.F.R. § 54.101(b).

⁵³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17792 para. 365; see 47 C.F.R. § 54.1006(a) and (b). As discussed below, support will be available to any recipient that covers a larger percentage of the designated road miles by the applicable construction deadline, up to 100 percent.

support is conditioned upon the recipient providing service over a network that achieves particular data rates under particular conditions, which the Commission, for this purpose, refers to as third generation (3G) networks or better.⁵⁴

27. *Data Rates.* To provide specificity, and solely for purposes of Mobility Fund Phase I, the Commission refers to a network as a 3G network if it achieves outdoor minimum data transmission rates of 50 kilobits per second (kbps) uplink and 200 kbps downlink at vehicle speeds appropriate for the roads covered.⁵⁵ Also solely for purposes of Mobility Fund Phase I, the Commission refers to a network as a fourth generation (4G) network if it achieves outdoor minimum data transmissions rates of 200 kbps uplink and 768 kbps downlink at vehicle speeds appropriate for the roads covered.⁵⁶ With respect to both 3G and 4G networks, transmission latency must be low enough to enable the use of real-time applications, such as Voice over Internet Protocol (VoIP).⁵⁷

28. *Performance Deadlines.* Winning bidders in Auction 901 will commit to provide service over either a 3G or a 4G network, as those terms are used with respect to Mobility Fund Phase I, in their post-auction long-form applications for support.⁵⁸ Those parties committing to provide service over a 3G network must do so for at least seventy-five percent (75%) or more of the designated road miles within the relevant area within two (2) years of being authorized to receive support.⁵⁹ Winning bidders committing to provide service over a 4G network must do so for at least seventy-five percent (75%) or more of the designated road miles within the relevant area within three (3) years of being authorized to receive support.⁶⁰ To the extent that a recipient covers road miles in excess of the minimum, support will be available for up to 100 percent of the designated road miles for which the recipient demonstrates coverage within the required timeframe associated with the technology deployed.⁶¹

29. *Reasonably Comparable Rates.* Recipients of Mobility Fund Phase I support must certify annually that they offer service in areas with support at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.⁶² This requirement extends for a period ending five years after the date of award of support.⁶³ We describe this requirement in more detail below in our explanation of post-auction application requirements.

⁵⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17791 para. 360; *see* 47 C.F.R. § 54.1006(a) and (b). In addition, the Commission expects “that ETCs that offer standalone broadband service in any portion of their service territory will also offer such service in all areas that receive CAF support.” *USF/ICC Transformation Order*, 26 FCC Rcd at 17695 para. 86 n.127.

⁵⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17791-92 para. 361; 47 C.F.R. § 54.1006(a)(1).

⁵⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17792 para. 362; 47 C.F.R. § 54.1006(b)(1).

⁵⁷ 47 C.F.R. § 54.1006(a)(2) and (b)(2).

⁵⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17791 para. 360; *see* 47 C.F.R. § 54.1005(b)(2)(v).

⁵⁹ 47 C.F.R. § 54.1006(a).

⁶⁰ 47 C.F.R. § 54.1006(b).

⁶¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17792 para. 365, 17693 para. 367; *see* 47 C.F.R. § 54.1006(a) and (b).

⁶² *USF/ICC Transformation Order*, 26 FCC Rcd at 17917 para 385; 47 C.F.R. §§ 54.1005(b)(2)(viii) and 54.1009(a)(4).

⁶³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17917 para. 385; *see* 47 C.F.R. § 54.1009. In the *Auction 901 Comment Public Notice*, the Bureaus proposed and sought comment on a standard for assessing compliance with (continued....)

30. *Collocation.* In exchange for the support provided, Mobility Fund Phase I recipients shall allow for reasonable collocation by other providers of services that would meet the voice and data requirements of Mobility Fund Phase I on newly constructed towers that the recipient owns or manages in the area for which it receives support.⁶⁴ Consistent with this requirement, a recipient may not enter into facilities access arrangements regarding relevant facilities that restrict any party to the arrangement from allowing others to collocate on the facilities.

31. *Voice and Data Roaming.* Recipients of Mobility Fund Phase I support must provide voice and data roaming on networks built with the support, consistent with the requirements of section 20.12 of the Commission's rules, as those rules were in effect on the date the Commission adopted the *USF/ICC Transformation Order*.⁶⁵ This condition of support is independent of subsequent changes to the Commission's rules on voice and data roaming, though to the extent any new rules are generally applicable, recipients of Mobility Fund Phase I support may be subject to those as well. As these requirements, as well as all the public interest obligations, are a condition of Mobility Fund Phase I support, violations may result in the withholding or clawing back of universal service support in addition to any other applicable sanctions.⁶⁶

5. Mobility Fund Phase I Eligibility Requirements

32. In order to participate in Auction 901 and receive Mobility Fund Phase I support, an applicant must demonstrate, for the areas on which it wishes to bid, that it has been designated as an eligible telecommunications carrier (ETC) and has access to the spectrum necessary to satisfy the applicable performance requirements.⁶⁷ In addition, an applicant must certify that it is financially and technically capable of providing 3G or better service.⁶⁸ Below, in our discussion of the short- and long-form application requirements, we describe in detail how applicants must demonstrate that they meet these eligibility requirements.

33. RTG advocates restricting eligibility to participate in the auction based on additional factors, primarily related to the size of the applicant.⁶⁹ The Commission previously considered and rejected similar proposals in the *USF/ICC Transformation Order*.⁷⁰ The Commission concluded that the competitive bidding rules and the procedures to be developed by the Bureaus would "promote its objectives for the Mobility Fund and provide a fair opportunity for serious, interested parties to

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this requirement. *Auction 901 Comment Public Notice*, 27 FCC Rcd at 547-49 paras. 65-70. We set forth the standard below, as well as the comments received in response to the proposal, when discussing the post-auction application in which a winning bidder must first make the certification.

⁶⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17794-95 para 376; 47 C.F.R. § 54.1006(d).

⁶⁵ 47 C.F.R. § 54.1006(e).

⁶⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17794-95 para. 380. See Section V.C.2. below.

⁶⁷ *Id.*, 26 FCC Rcd at 17798-17801 paras. 388-99; 47 C.F.R. § 54.1003. A Tribal entity may participate provided it has applied for designation as an ETC for the relevant area and that application is still pending. Any such entity must still receive designation prior to support being awarded. *USF/ICC Transformation Order*, 26 FCC Rcd at 17823 para. 491; 47 C.F.R. § 54.1004(a). The requirement that parties have access to spectrum applies equally to all parties, including Tribal entities.

⁶⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17801 paras. 400-03; 47 C.F.R. § 54.1002(c).

⁶⁹ RTG Comments at 7.

⁷⁰ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17802 paras. 407-09.

participate.”⁷¹ We also note that the Bureaus cannot modify the eligibility requirements, because the changes RTG advocates are beyond the scope of the Bureaus’ delegated authority and the scope of this proceeding and would require action by the Commission to reconsider its determination in the *USF/ICC Transformation Order*.⁷²

6. Annual Reporting and Record Retention Requirements

34. Winning bidders that are authorized to receive Mobility Fund Phase I support are required to submit to the Commission an annual report each year for the five years after being so authorized. The information and certifications required to be included in the annual report are described in section 54.1009 of the Commission’s rules.⁷³ In addition, authorized winning bidders are required to submit certain reports before receiving disbursements of support.⁷⁴ Mobility Fund Phase I support will be available for disbursement to authorized winning bidders in three stages, with the first disbursement made when the winning bidder is authorized to receive support.⁷⁵ A recipient will be eligible to receive the second disbursement when it submits a report demonstrating coverage of 50 percent of the applicable coverage requirements of section 54.1006 of the Commission’s rules.⁷⁶ A recipient will be eligible to receive the final disbursement when it submits a report demonstrating coverage meeting the applicable requirements of section 54.1006 of the Commission’s rules.⁷⁷

35. A winning bidder authorized to receive Mobility Fund Phase I support and all of its agents are required to retain any documentation prepared for, or in connection with, the award of Mobility Fund Phase I support for a period of not less than ten years after the date on which the winning bidder receives its final disbursement of Mobility Fund Phase I support.⁷⁸

C. Auction Specifics

1. Auction Start Date

36. Bidding in Auction 901 will be held on **Thursday, September 27, 2012**.⁷⁹ Unless otherwise announced, bidding for all census blocks will be offered at the same time.

⁷¹ *Id.* at 17802 para. 409.

⁷² Other commenters contend that smaller carriers ought to be provided with a bidding preference, such as a bidding credit, in order to enhance the chance that such carriers might win the auction. *See* Blooston Comments at 12-13; NTCA Reply at 4. While the Commission has sought comment on providing such a preference in the FNPRM adopted in the *USF/ICC Transformation Order*, it did not adopt such a preference for Mobility Fund Phase I and it is beyond our authority to do so in this proceeding. *See USF/ICC Transformation Order*, 26 FCC Rcd at 18077-78 paras. 1157-60. In connection with the *USF/ICC Transformation Order*, the Commission prepared a Final Regulatory Flexibility Analysis concerning the possible impact on small entities of, among other things, the Mobility Fund Phase I rules the Bureaus implement in this Public Notice. *Id.* at 18151 para. 1410.

⁷³ 47 C.F.R. § 54.1009. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17817 paras. 470-474.

⁷⁴ 47 C.F.R. § 54.1008. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17815-16 paras. 464-469.

⁷⁵ 47 C.F.R. § 54.1008(b)(1).

⁷⁶ 47 C.F.R. § 54.1008(b)(2).

⁷⁷ 47 C.F.R. § 54.1008(b)(3).

⁷⁸ 47 C.F.R. § 54.1010.

⁷⁹ We note that NTCH and US Cellular contend that the auction should be delayed in light of pending litigation regarding the source of funds to be disbursed based on the auction and in light of the pending Petitions for (continued....)

37. The start and finish time of bidding will be announced by public notice approximately one week before the start of the auction.

2. Auction Title

38. Auction 901 – Mobility Fund Phase I

3. Bidding Methodology

39. As discussed in more detail below, the bidding methodology for Auction 901 will be single-round reverse format.⁸⁰ The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet. Telephonic bidding will not be available for Auction 901 because it will not be feasible given the number of eligible geographic areas and the manner in which bids will be uploaded.⁸¹

4. Pre-Auction Dates and Deadlines

40. The following dates and deadlines apply:

Auction Tutorial Available (via Internet).....	June 27, 2012
Short-Form Application (FCC Form 180)	
Filing Window Opens	June 27, 2012; 12:00 noon ET
Short-Form Application (FCC Form 180)	
Filing Window Deadline	July 11, 2012; 6:00 p.m. ET
Mock Auction.....	September 25, 2012
Auction Begins.....	September 27, 2012

5. Requirements for Participation

41. Those wishing to participate in this auction must:

- Submit a short-form application (FCC Form 180) electronically prior to 6:00 p.m. ET, July 11, 2012, following the electronic filing procedures that will be provided in a separate public notice to be released in the near future; and
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

D. Rules and Disclaimers

1. Relevant Authority

42. Prospective applicants in Auction 901 must familiarize themselves with the Commission's general universal service rules, contained in 47 C.F.R. Part 54, and the Mobility Fund
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Reconsideration of various aspects of the *USF/ICC Transformation Order*. See NTCH Comments at 1-2; US Cellular Reply at 10-11. We disagree that either the pending litigation or the pending Petitions are a sufficient basis for the Bureaus to delay the scheduled auction start date. The Commission already has considered the issues in the pending litigation at length in proceedings before it. See *USF/ICC Transformation Order*, 26 FCC Rcd at 18258 Appendix F (denying pending Petitions for Reconsideration of High-Cost Universal Service Support, WC Docket No. 05-337, CC Docket No. 96-45, *Order and Notice of Proposed Rulemaking*, FCC 10-155, 25 FCC Rcd 12854 (2010)). With respect to the pending Petitions seeking reconsideration of the *USF/ICC Transformation Order*, we will not take any action here that would prejudice the Commission's review of the Petitions.

⁸⁰ See Section IV.A.1. "Auction Structure – Reverse Auction Mechanism," below.

⁸¹ See Section IV.B.1. "Bidding," below.

specifically, 47 C.F.R. §§ 54.1001- 54.1010. They should also familiarize themselves with the Commission's decision in the *USF/ICC Transformation Order* to implement the Mobility Fund Phase I.⁸²

43. Prospective bidders in Auction 901 must be familiar with the specific competitive bidding rules for universal service support contained in 47 C.F.R. §§ 1.21000 – 1.21004, as well as the procedures, terms and conditions contained in this Public Notice, the *Auction 901 Comment Public Notice*, and all other public notices related to Auction 901 (AU Docket No. 12-25).⁸³ Additionally, prospective Auction 901 bidders will find it helpful to familiarize themselves with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.⁸⁴

44. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

45. Copies of most auction-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpweb.com>.⁸⁵

2. Prohibited Communications and Compliance with Antitrust Laws

46. To ensure the competitiveness of the auction process, section 1.21002 of the Commission's rules prohibits an applicant in a Mobility Fund auction from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of

⁸² See, generally, *USF/ICC Transformation Order*. See also Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 11-13, 26 FCC Rcd 4554 (2011).

⁸³ See, e.g., *Auction 901 Comment Public Notice*, *Auction 901 Updated Blocks Public Notice*.

⁸⁴ See, e.g., Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001) ("*Part 1 Seventh Report and Order*"); *Eighth Report and Order*, FCC 02-34, 17 FCC Rcd 2962 (2002); *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, FCC 03-98, 18 FCC Rcd 10180 (2003); *Second Order on Reconsideration of the Fifth Report and Order*, FCC 04-295, 20 FCC Rcd 1942 (2005).

⁸⁵ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 12-121 for the *Auction 901 Comment Public Notice*).

its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support, unless such applicants are members of a joint bidding arrangement identified on the short form application(s) pursuant to section 1.21001(b)(3)-(4).⁸⁶

47. Section 1.21002 is based on a similar rule used by the Commission in competitive bidding for spectrum licenses, section 1.2105(c) of the Commission's rules.⁸⁷ Potential bidders should familiarize themselves with sections 1.2105(c) and 1.21002, as well as the judicial, Commission and Wireless Bureau decisions addressing application of the rule prohibiting certain communications listed in Attachment E.⁸⁸

a. Entities Subject to Section 1.21002, the Rule on Prohibited Communications

48. Section 1.21002's prohibition on certain communications will apply to any applicant that submits a short-form application to participate in Auction 901. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under section 1.21001(b)(3), applicants in Auction 901 must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy.⁸⁹ In some instances, this prohibition extends to communications regarding the post-auction market structure. **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**⁹⁰

49. For the Mobility Fund Phase I auction, all bidders will compete for support with all other bidders in Auction 901, regardless of the geographic areas they seek to serve with Mobility Fund support. Therefore, applicants will be prohibited from making certain communications with all other applicants in Auction 901 regardless of the geographic areas they select, unless the parties disclose agreements reached between the parties on their short-form applications.

50. For purposes of the prohibition on certain communications, section 1.21002 defines "applicant" broadly to include the applicant, each party capable of controlling the applicant, including all

⁸⁶ See 47 C.F.R. §§ 1.21001(b)(4), 1.21002; *see also* *USF/ICC Transformation Order*, 26 FCC Rcd at 17807 para. 431.

⁸⁷ 47 C.F.R. § 1.2105(c).

⁸⁸ Because section 1.21002 was recently adopted for Mobility Fund competitive bidding, the Commission's prior experience in this area in the context of section 1.2105(c). Applicants should review information regarding our interpretation of section 1.2105(c) to gain insight into the Commission's views on prohibited communications during competitive bidding for Mobility Fund support.

⁸⁹ "Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders," *Public Notice*, DA 96-1460, 11 FCC Rcd 10134 (1996).

⁹⁰ *See, e.g.,* *Star Wireless, LLC, Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626, 18628 para. 4 & n.19 (2004), *order granted in part sub nom*, *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007) ("*Star and Northeast Review Order*"), *petition for review denied*, *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid); *Letter to Robert Pettit, [Esquire], from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division*, DA 00-2905, 16 FCC Rcd 10080 (2000) (declining to exempt an applicant's controlling interest from coverage by the communication prohibitions of section 1.2105(c), even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

officers and directors, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.⁹¹

51. Individuals and entities subject to section 1.21002 should take special care in circumstances where their officers, directors and employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies. For example, the Wireless Bureau has found that, when an individual serves as an officer for two or more applicants, the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of the rule prohibiting certain communications occurs.⁹² The Wireless Bureau has not addressed a situation where non-principals (i.e., those who are not officers or directors, and thus not considered to be the applicant) receive information regarding a competing applicant's bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

52. Moreover, Auction 901 applicants are encouraged not to use the same individual as an authorized bidder. A violation of section 1.21002 could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., a law firm or engineering firm or consulting firm), a violation similarly could occur.⁹³ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with section 1.21002.⁹⁴

b. Prohibition Applies Until Long Form Application Deadline

53. The section 1.21002 prohibition on certain communications begins at the short-form application filing deadline and ends at the long form application deadline after the auction closes, which will be announced in a future public notice.⁹⁵

c. Prohibited Communications

54. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction (as described above).⁹⁶ Section 1.21002 prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's

⁹¹ 47 C.F.R. § 1.21002(a).

⁹² See, e.g., Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14648 (2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

⁹³ See Application of Nevada Wireless, *Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11973, 11977-78 paras. 11-12 (1998) ("*Nevada Wireless Order*").

⁹⁴ *Id.*

⁹⁵ 47 C.F.R. § 1.21002(b). Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase I support must file an application for Mobility Fund Phase I support (also known as the long form application) no later than 10 business days after the public notice identifying them as winning bidders. 47 C.F.R. § 54.1005(b)(1).

⁹⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17807 para. 431. See also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-54 para. 12. For a discussion of the term "applicant" within the meaning of section 1.21002, see Section I.D.2.a. above.

bids or bidding strategy.⁹⁷ While section 1.21002 does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

55. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place outside of the auction itself. For example, the Commission has warned that prohibited “communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.”⁹⁸ Moreover, the Commission has found a violation of the rule against prohibited communications where an applicant used the Commission’s bidding system to disclose “its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,”⁹⁹ and has placed auction participants on notice that the use of its bidding system “to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.”¹⁰⁰ Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, an applicant’s statement to the press that it intends to stop bidding in the auction could give rise to a finding of a section 1.21002 violation.¹⁰¹ Similarly, an applicant’s public statement of intent not to participate in Auction 901 bidding could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post auction market structures may violate section 1.21002.

d. Disclosure of Bidding Agreements and Arrangements

56. The Commission’s rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications.¹⁰² Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the Mobility Fund Phase I support they seek, including any agreements relating to post-auction market structure.¹⁰³

⁹⁷ See 47 C.F.R. § 1.21002(b). See also Notice of Apparent [L]iability for Forfeiture of Western PCS BTA 1 Corp., *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571, 21574 para. 8 (1999).

⁹⁸ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7689 para. 12 (1994) (“*Competitive Bidding Memorandum Opinion and Order*”).

⁹⁹ Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970, 17974, 17976 paras. 12, 17 (1997).

¹⁰⁰ Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755, 23760 para. 11 (1998).

¹⁰¹ Compare “Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction,” *Public Notice*, DA 98-37, 13 FCC Rcd 341, 347-48 (1998) (“Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.”).

¹⁰² 47 C.F.R. § 1.21001(b)(3)-(4).

¹⁰³ 47 C.F.R. §§ 1.21001(b)(3)-(4), 1.21002.

57. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under section 1.21001(b)(3), even if the agreement has not been reduced to writing.¹⁰⁴ If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.¹⁰⁵

58. Section 1.21002 of the Commission's rules does not prohibit non-auction-related business negotiations among auction applicants.¹⁰⁶ However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, and other transactional agreements.¹⁰⁷

e. Section 1.21001(b)(4)-(5) Applicant Certifications

59. By electronically submitting a short-form application, each applicant in Auction 901 certifies its compliance with sections 1.21001(b)(3) and 1.21002.¹⁰⁸ In particular, an applicant must certify under penalty of perjury that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding for Mobility Fund support.¹⁰⁹ Also, the applicant must certify that it and all applicable parties have complied with and will continue to comply with 47 C.F.R. § 1.21002.¹¹⁰

60. The Bureaus caution, however, that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.¹¹¹ The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring."¹¹² Any applicant found to have violated section 1.21001(b)(4) and (5) may be subject to sanctions.¹¹³

¹⁰⁴ 47 C.F.R. § 1.21001(b)(3).

¹⁰⁵ See "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, DA 95-2244, 11 FCC Rcd 9645, 9646 (WTB 1995) ("Anti-Collusion Public Notice").

¹⁰⁶ See, e.g., Todd Stuart Noordyk, *Memorandum Opinion and Order*, FCC 01-275, 16 FCC Rcd 18113, 18116-17 para. 12 (2001).

¹⁰⁷ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 467-68 para. 163 (1997).

¹⁰⁸ 47 C.F.R. §§ 1.21001(b)(3), 1.21002.

¹⁰⁹ 47 C.F.R. § 1.21001(b)(4).

¹¹⁰ 47 C.F.R. §§ 1.21001(b)(5), 1.21002.

¹¹¹ *Nevada Wireless Order*, 13 FCC Rcd at 11978 para. 13.

¹¹² *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 para. 12.

¹¹³ See, e.g., 47 C.F.R. § 1.2109(d).

f. Duty to Report Prohibited Communications

61. Section 1.21002(c) provides that any applicant that makes or receives a communication that appears to violate section 1.21002 must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.¹¹⁴ An applicant's obligation to make such a report continues until the report has been made.¹¹⁵

62. In addition, section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application.¹¹⁶ Thus, section 1.65 requires an Auction 901 applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by section 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under section 1.21001(b)(4).¹¹⁷

63. Sections 1.65(a) and 1.21002 of the Commission's rules require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment.¹¹⁸ These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureaus to act expeditiously on those changes when such action is necessary.¹¹⁹

g. Procedure for Reporting Prohibited Communications

64. A party reporting any prohibited communication pursuant to sections 1.65, 1.21001(b), or 1.21002(c) must take care to ensure that any report of the prohibited communication does not itself give rise to a violation of section 1.21002.¹²⁰ For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

65. Parties must file only a single report concerning a prohibited communication and must file that report with Commission personnel expressly charged with administering the Commission's auctions.¹²¹ This rule is designed to minimize the risk of inadvertent dissemination of information in such

¹¹⁴ 47 C.F.R. § 1.21002(c); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55 paras. 13-17.

¹¹⁵ 47 C.F.R. § 1.21002(c).

¹¹⁶ 47 C.F.R. § 1.65; *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 para. 9.

¹¹⁷ *See Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 para. 9.

¹¹⁸ Procedural Amendments to Commission Part 1 Competitive Bidding Rules, WT Docket No. 10-18, *Order*, FCC 10-4, 25 FCC Rcd 521, 523 para. 8 (2010) ("*Part 1 Procedural Amendments Order*").

¹¹⁹ *Id.*

¹²⁰ 47 C.F.R. §§ 1.65, 1.21001(b)(3)-(5), 1.21002.

¹²¹ *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522 para. 4. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

reports. Any reports required by section 1.21002(c) must be filed consistent with the instructions set forth in this Public Notice.¹²² For Auction 901, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to the following e-mail address: auCTION901@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 6423, Washington, DC 20554.

66. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules.¹²³ We encourage such parties to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.¹²⁴ This Public Notice provides additional guidance on procedures for submitting application-related information below.¹²⁵

h. Winning Bidders May Need to Disclose Terms of Agreements

67. Each applicant that is a winning bidder may be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into.¹²⁶ This may apply to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

68. A summary listing of documents issued by the Commission and the Wireless Bureau addressing the application of the rule prohibiting certain communications may be found in Attachment E.¹²⁷ These documents are available on the Commission's auction web page at http://wireless.fcc.gov/auctions/prohibited_communications.

¹²² *Id.*

¹²³ See 47 C.F.R. § 0.459 (requests that materials or information submitted to the Commission be withheld from public inspection). Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. See 47 C.F.R. § 0.459(a).

¹²⁴ See Section VI. "Contact Information," below.

¹²⁵ See Section II. J. "Maintaining Current Information in Short-Form Applications," below.

¹²⁶ See 47 C.F.R. § 54.1005(b)(2)(xi) (applicants for Mobility Fund Phase I support will need to provide such additional information as the Commission may require).

¹²⁷ As noted above, these documents discuss the rule prohibiting certain communications in the context of competitive bidding for spectrum licenses or broadcast permits, section 1.2105(c). Applicants will find this information helpful to understanding the similar prohibition in the context of competitive bidding for Mobility Fund support.

j. Antitrust Laws

69. We also remind applicants that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.¹²⁸ Compliance with the disclosure requirements of section 1.21002 will not insulate a party from enforcement of the antitrust laws.¹²⁹ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application.¹³⁰ Similarly, the Wireless Bureau previously reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."¹³¹

70. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.¹³² If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to a forfeiture and may be prohibited from participating in future auctions, among other sanctions.¹³³

3. Due Diligence

71. The Bureaus remind each potential bidder that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of Mobility Fund Phase I support it submits as a bid in Auction 901. Each bidder is responsible for assuring that, if it wins the support, it will be able to build and operate facilities in accordance with the Mobility Fund obligations and the Commission's rules generally.

72. **Applicants should be aware that Auction 901 represents an opportunity to apply for Mobility Fund support, subject to certain conditions and regulations. Auction 901 does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does Mobility Fund support constitute a guarantee of business success.**

¹²⁸ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rulemaking*, FCC 99-384, 14 FCC Rcd 21558, 21560-61 para. 4 & n.17 (1999) quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 para. 12 ("[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws."); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6869 n.134 (1994)("[A]pplicants will also be subject to existing antitrust laws.") (*Fourth Memorandum Opinion and Order*).

¹²⁹ See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 para. 12. See also "Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release* 98-536 (DOJ Nov. 10, 1998).

¹³⁰ See, e.g., *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869 n.134. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. *Id.*

¹³¹ *Anti-Collusion Public Notice*, 11 FCC Rcd at 9646.

¹³² See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 para. 226.

¹³³ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 para. 226.